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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,127	12/29/1999	HIDEAKI OKADA	0666.023000E	1901

7590 10/19/2004

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EXAMINER


DEPUMPO, DANIEL G

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/474,127	<b>Applicant(s)</b> OKADA ET AL. 	
	<b>Examiner</b> Daniel G. DePumpo	<b>Art Unit</b> 3611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Regarding the IDS that was filed on 3/20/2000, the examiner had previously drawn a line in pencil through various references listed on that IDS because these references were not available to the examiner. This IDS has now been scanned resulting in the pencil markings being made permanent. It is suggested that applicant submit a new copy of this IDS so that it may be initialed by the examiner now that the references listed thereon are available to the examiner.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritter in view of either Hauser or von Kaler '501.

Ritter teaches an apparatus having the structure substantially as claimed. The apparatus includes a housing 41, a hydrostatic transmission 1, a pair of axles 25/26 and a ring gear 23. It is unclear whether Ritter teaches bevel gears on the axles, and pinion gears within the ring gear. However, this arrangement is common, as taught by Hauser (fig. 1) or von Kaler (fig. 8) for example. It would have been obvious to use this arrangement, as taught by either Hauser or von Kaler, since Ritter does not disclose a specific arrangement for the bevel gears and pinion gears, and since this arrangement is common (as taught by either Hauser or von Kaler), to provide a compact and sturdy axle drive means.

4. Claim 7 is rejected under Interference Estoppel under 37 C.F.R. § 1.658(c).

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As conceded by applicant at pages 7 and 8 of the remarks filed 1/20/04, claim 13 of Interference No. 104,496 includes all the elements of claim 7 except for the arrangement of the bevel gears, the ring gear and the pinion gears. However, this arrangement is common and would have been obvious in view of Hauser (fig. 1) or von Kaler '501 (fig. 8). It would have been obvious to use this arrangement, as taught by either Hauser or von Kaler, since this arrangement is common (as taught by either Hauser or von Kaler), to provide a compact and sturdy axle drive means.

5. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


6. The following is a statement of reasons for the indication of allowable subject matter: The subject matter of claim 13 is not taught by the prior art. Also, this subject matter is not disclosed by the various related patents to Louis and/or Johnson that were involved in the Interferences. Consequently, this subject matter could not have been involved in the Interferences.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel G. DePumpo  
Primary Examiner  
Art Unit 3611

dgd  
10/13/04